

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Kent Genin on September 10, 2008.

The application has been amended as follows:

On page 7 of the Specification:

After the paragraph beginning "FIG. 35", the following paragraph is added:

—FIG. 36 is a sectional view of a distal end of an embodiment of nebulizing catheter usable with an endotracheal tube. —

### *Reasons for Allowance*

2. Claims 64-77 and 79-80 are allowed.
3. The following is an examiner's statement of reasons for allowance:
4. Per independent claim 77: The subject matter not found in the prior art is a distal section maintained in a j-shaped orientation such that a plurality of the catheter orifices point toward a proximal end of the catheter such that nebulized spray is propelled toward the proximal end of the catheter, in combination with the orifices nebulizing a liquid delivered through one of the

lumens to form an aerosolized gas delivered through another lumen. The closest prior art teaches the following:

5. US Patent No. 5,803,078 issued to Brauner; teaches forming a catheter comprising a plurality of orifices for nebulizing a fluid wherein the distal section of the catheter is maintained in an orientation having the plurality of orifices pointing substantially aligned with the distal end of the catheter such that high velocity gas flow exits its orifice to aerosolize liquid expelled from the liquid orifice such that the nebulized fine particles/spray is propelled in a distal/forward direction into a pulmonary passageway of a patient. Brauner does not teach forming a j-shaped distal section and does not teach maintaining the orifices pointing toward a proximal end of the catheter.
6. US Patent No. 4,990,133 issued to Solazzo; teaches forming a catheter comprising a plurality of orifices at a j-shaped distal section, said j-shaped distal section is maintained during insertion for allowing the user the ability to control insertion and placement of the catheter. Once inserted, shape memory wires embedded in a wall of the catheter act in conjunction with slits in the wall to push away the distal end to create a straight line lumen and opening oriented toward the distal end of the catheter. Solazzo does not teach maintaining the j-shaped distal section in an orientation having the plurality of orifices pointing toward a proximal end of the catheter.
7. The prior art does not teach or fairly suggest maintaining the j-shape in an orientation having the orifices pointing toward a proximal end of the catheter because this would cause the aerosolized liquid to be propelled "backwards" toward the proximal end of the catheter instead of

being propelled “forward” distally in the direction the catheter is advancing, toward the target pulmonary tissue.

8. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571)272-4934. The examiner can normally be reached on Monday through Friday 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ginger T Chapman/

Application/Control Number: 10/606,442

Page 5

Art Unit: 3761

Examiner, Art Unit 3761

8/14/08

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761